

**Office of the
Attorney General**

Landlord and Tenant Guidelines



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INTRODUCTION

My office publishes this manual as a courtesy to assist landlords and tenants of residential property in understanding their rights and responsibilities.

Idaho law provides for certain landlord-tenant obligations. The landlord and tenant can establish other arrangements or obligations in oral or written agreements or leases. For simplicity, we use the term "rental agreement" throughout this manual to refer to these private contracts.

Normally, the terms of a rental agreement are binding on all parties to the agreement and are enforceable in a court of law. Agreements may contain specific clauses, which modify or supplement broad general principles covered by Idaho law. You should seek the advice of an attorney if you have questions regarding the legality or enforceability of a term of a rental agreement or if you, as a landlord or a tenant, are served with legal papers

regarding your landlord-tenant relationship. You can obtain the name and phone number of an attorney by contacting the Idaho Lawyer Referral Service at 334-4500 or P.O. Box 895 Boise, Idaho, 83701.

I hope this manual will minimize conflicts or misunderstandings and assist in the resolution of landlord-tenant disputes.

Sincerely,

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RENTAL AGREEMENTS

WRITTEN RENTAL AGREEMENTS

The written rental agreement between the landlord and the tenant is an important legal document. This agreement should be read and understood by both parties before it is signed. If either party has questions or wishes to have the terms of the rental agreement changed, these matters should be resolved before the agreement is signed. This document will control your agreement. Neither party should rely on oral statements that are contrary to the terms of the written rental agreement. If the rental agreement is for a period of a year or more, it must be in writing.

ORAL RENTAL AGREEMENT

Even if the landlord and tenant have not entered into a written rental agreement, a valid oral rental agreement may exist. An oral agreement is legally binding if its terms have been agreed upon. The problem with an oral agreement is the difficulty in proving what terms were actually agreed upon.

Most oral landlord/tenant agreements are more casual than written agreements and usually result in an agreement known as a "periodic tenancy." When a landlord and a tenant enter into an agreement whereby the tenant agrees to pay rent on a periodic basis in return for the possession of the building or part thereof, a

periodic tenancy results. The period, which can be any length, is equal to the period for which rent is paid. Most periodic tenancies run from month to month.

A month-to-month tenancy does not have to run from the first of the month until the first of the following month. It can run from any specific day of the month to one day earlier of the following month. For example, the rental period might run from the 15th day of one month to the 14th day of the next month. For the sake of convenience, most month-to-month tenancies do begin on the first day of the month.

TERMS CONTAINED IN A RENTAL AGREEMENT

It is advisable that a rental agreement, whether written or oral, cover the following subjects:

1. The names and addresses of the landlord, the agent, the tenant, a friend or relative of the tenant, and the apartment manager.
2. The address and/or a description of the property to be rented.
3. The date the agreement is to begin.
4. The purpose for which the property is to be used.
5. The amount of the rent.

6. The date the rent is due.
7. If a security deposit is required, a statement of how much it is and what it will be used for.
8. A notation as to the condition of the premises.
9. An explanation as to who is responsible for each of the utilities.
10. An explanation of any restrictions the landlord wishes to place on the property, such as the number of occupants and whether pets are permitted.
11. An explanation of whether the property can be assigned or sublet.
12. An explanation of how the agreement may be terminated, and how much notice is required.
13. The date the agreement is to end, if it is other than a month-to-month tenancy.
14. An explanation of when and how the landlord can enter the premises.
15. The signatures of all parties, if the agreement is in writing.

THE RIGHTS AND THE RESPONSIBILITIES OF THE LANDLORD AND THE TENANT PROVIDED FOR BY IDAHO LAW

Idaho law provides for certain rights and requires certain duties of both the landlord and the tenant, regardless of whether a written rental agreement exists.

POSSESSION

The basic right of a tenant is the right to possession of the property during the existence of the rental agreement. When a rental agreement expires, the landlord has the right to have possession of the property returned. If the tenant does not vacate the property at that time, a landlord cannot lock a tenant out without a court order. Idaho law requires the landlord to give certain notice to the tenant and, if necessary, institute formal legal proceedings to regain possession of the property.

If a tenant violates the terms of the rental agreement, such as failing to pay rent; the landlord can take steps to evict the tenant. See the section titled "Landlord's Remedies."

ENTRY BY THE LANDLORD

Because Idaho law says nothing as to whether the landlord has the right to enter the premises, the rental agreement should reserve to the landlord the right to enter the property to make repairs, to inspect for

damage, to show the property to prospective purchasers, and to show the property to prospective tenants near the end of the lease, as long as such entry is at a reasonable time and is done in a reasonable manner. In addition, a provision should be included in the rental agreement explaining the landlord's rights when a tenant is in default in the rent and has been absent from the premises for a considerable period of time

If the rental agreement does not address the landlord's right to enter the premises, the landlord should notify the tenant as to the necessity of entry, requesting permission to enter in a reasonable manner. Permission for reasonable entry by the landlord should not be refused by the tenant

Although the law is not clear, a landlord who has reasonable cause to believe that damage is occurring to the property probably has the right to enter to inspect for damage. However, if possible, arrangements for entry should be made with the tenant

SECURITY DEPOSITS

A landlord can require a tenant to deposit a sum known as a security deposit. A security deposit is for purposes other than the payment of rent. The rental agreement should specify the amount of the security deposit and what it may be used for. If the security deposit can be used for payment of rent, the rental agreement and/or the deposit receipt should clearly indicate this. The security

deposit cannot be used to cover normal wear and tear. Normal wear and tear means the deterioration that occurs based upon the use for which the rental unit is intended and without negligence, carelessness, accident, misuse, or abuse of the premises or contents by the tenants, their family or their guests.

A landlord who finds it necessary to use a security deposit is required to provide the tenant with a signed statement as to expenditures required, the amount retained and the purpose for which the amount retained was used. The statement and the remainder of the security deposit, if any, or the full deposit, must be given to the tenant within twenty-one (21) days after the tenant surrenders the premises. If both the landlord and the tenant have previously agreed, this period can be extended up to thirty (30) days, but no longer.

If the landlord refuses to comply with the requirements concerning a security deposit, the tenant can require compliance. The tenant must first give the landlord notice, in writing, of the violation and demand compliance. The landlord must be allowed three (3) days to refund the deposit or provide the necessary statement. If the landlord does not comply, the tenant can then institute a formal legal proceeding to require the landlord to refund the security deposit. This lawsuit can be brought either in the district court or in small claims court. If the action is brought in small claims court, the damages sought cannot exceed \$4,000. If the tenant is successful, the court may, at its discretion,

award damages up to the amount of three times the security deposit.

CARE OF THE PREMISES

The tenant has the responsibility of safeguarding the rental property and making sure that damage does not occur. The tenant is responsible and may be required to compensate the landlord for any damage that occurs due to his or her own negligence or that of the tenant's family members or guests. However, a tenant is not responsible for normal wear and tear.

The landlord has an obligation to provide reasonable waterproofing and weather protection, and to provide premises that are not hazardous to the health and safety of the tenant. A landlord also has the duty of installing approved smoke detectors. A landlord, who provides electrical, plumbing, heating, ventilating, cooling or sanitary facilities, must maintain them in good working order. City codes generally require that most of these services be provided.

TENANT'S PROPERTY

When the rental agreement expires, a tenant vacating the premises has a right to remove personal property as long as the removal of such property does not injure the premises. For example, if a built-in bookcase can be removed without injury to the premises, it can be taken.

But, if the tenant's property has become an integral part of the rental property, it cannot be removed.

If a tenant leaves property of value behind after vacating a rental or storage unit, the landlord may sell the tenant's property to recover uncollected rent or other costs. However, if the landlord sells the property for more than the amount of the uncollected rent or costs, the landlord must report the excess money to the Idaho State Tax Commission as unclaimed property belonging to the tenant. The tenant may reclaim the money in accordance with Idaho's unclaimed property laws. For more information about reporting and reclaiming abandoned property, go to the Tax Commission's website at: <http://tax.idaho.gov>.

Idaho law does not provide for a landlord's lien on the property, which belongs to a tenant. Rental agreements sometimes grant to the landlord a lien on the tenant's property. Courts have upheld similar agreements when the tenant knowingly and voluntarily enters into, and understands the consequences of, such agreements.

PAYMENT OF RENT

The landlord has a basic right to receive payment of rent as agreed upon. If the tenant does not pay the rent as required by the rental agreement, the landlord can institute legal proceedings to obtain possession of the property, obtain damages incurred as a result of failure

to pay rent, or both. (See the section titled "Landlord's Remedies.")

RENT INCREASES

Rent can be increased only after proper notice. In a month-to-month tenancy, a written notice must be given at least fifteen (15) days before the end of the period and fifteen (15) days prior to the date the rent increase is to become effective. If a rental agreement, whether written or oral, specifies the amount of the rent for a set time, the rent cannot be increased during the time specified, without the mutual agreement of the parties.

There are no federal or state rent control or rent stabilization laws that apply in Idaho. As a result, there are no legal limitations on how much or how often a landlord can raise the rent.

CHANGES IN THE TERMS OF THE RENTAL AGREEMENT

The terms of a rental agreement for a specified time (for example, a six-month lease) cannot be changed unless both parties to the agreement consent to the proposed changes. Such changes should be made in writing as a modification to the agreement or as an entirely new rental agreement.

In a month-to-month tenancy the landlord may change the terms of the rental agreement by giving the tenant notice of the changes at least fifteen (15) days before the

end of the period and fifteen (15) days before the changes are to become effective. This notice must be in writing. If the tenant continues to rent for the following month period, the changes the landlord gave notice of automatically become effective.

TERMINATION

When a rental agreement is for a specified time, no legal right exists to terminate it prior to the expiration of the agreement.

Generally, a periodic tenancy, such as a month-to-month tenancy, can be terminated by either party to the rental agreement upon one month's advance written notice to the other party. Thus, in a month-to-month tenancy, notice must be provided one month before expiration of the month in which the tenant moves, unless the landlord otherwise agrees. Landlords will often permit a termination date other than the last day of the period if ample notice is given. It is advisable to put the termination notice in writing and give it personally to the landlord.

If a tenant fails to provide the required notice prior to moving, the landlord has a right to recover damages from the tenant, which is usually the rent due for the period the apartment is vacant. The landlord should attempt to reduce damages by making reasonable efforts to rent the premises to another tenant.

TRANSFER OF PROPERTY OR RENTAL AGREEMENT

When the landlord sells the property being rented, the new landlord takes over all the rights and responsibilities of the seller, including the obligations regarding security deposits.

A tenant does have the right to sublet, that is, rent the premises to another, unless the rental agreement specifically prohibits this. An original tenant who does sublet remains responsible to the landlord, unless otherwise consented to by the landlord in the rental agreement.

LANDLORD'S REMEDIES

If a tenant fails to pay rent or violates any terms of the rental agreement, the landlord must give the tenant written notice of the violation and provide three (3) days in which the tenant can remedy the problem. The notice informing the tenant of the violation must be delivered to the tenant personally. But if the tenant is absent from his place of residence and usual place of business, a copy of the notice may be left with some person of suitable age and discretion at either place and a copy sent through the mail addressed to the tenant at his place of residence. If the place of residence and business cannot be ascertained, or if a person of suitable age or discretion cannot be found, each of the following steps must be taken: (1) a copy of the notice must be posted in

a conspicuous place on the property; (2) if a person residing on the premises can be found, a copy must be left with that person, and (3) a copy must be mailed to the tenant at the address where the property is situated.

If the tenant does not remedy the violation, the landlord cannot use force. Formal legal proceedings must be instituted. The advice of an attorney is recommended.

If a landlord pursues formal legal proceedings solely for the purpose of evicting a tenant due to nonpayment of rent, the legal proceedings must proceed quickly. The trial must be held within twelve (12) days after the lawsuit is filed with the court, unless the landlord requests a later date. The tenant must be given written notice of the action by being served with a copy of the summons and the complaint at least five (5) days prior to the court hearing. At the tenant's request, the judge may grant a continuance, but only for two (2) days, unless the tenant provides the landlord with a security such as a sum of money equal to the rent due and owing. Such security would be deposited with the clerk of court. If a landlord is successful in a formal legal proceeding to evict a tenant, the tenant may be required to pay the landlord's court costs and disbursements.

If a landlord wishes to recover rent that the tenant has failed to pay or to recover other damages, the landlord may institute legal proceedings. If the damages the landlord seeks are \$4,000 or less, the action may be taken in small claims court. If the landlord is successful,

the court will award damages, usually equal to the amount of unpaid rent. However, the court may require the tenant to pay three times the amount of damages suffered. A tenant may also be required to pay the court costs and the fees of the landlord's attorney.

If a landlord has reasonable grounds to believe that any person is or has been engaged in the unlawful delivery, production, or use of a controlled substance on the leased premises, the landlord can go to court to evict the tenant.

TENANT'S REMEDIES

If a landlord fails to provide reasonable water-proofing and weather protection, fails to provide premises that are not hazardous to health and safety of the tenant, fails to install approved smoke detectors, or does not maintain in good working order electrical, plumbing, heating, ventilating, cooling, or sanitary facilities which are provided, the tenant can require the landlord to provide the services. With one exception, the law in Idaho is not established as to whether the tenant has a legal right to withhold rent and/or to complete the repairs and then seek reimbursement from the landlord, but it appears that such rights do not exist. The exception is with respect to the installation of smoke detectors. Idaho Code § 6-320(a)(6) authorizes a tenant, after providing three-day notice to the landlord, to install the smoke detectors and deduct the cost from the tenant's next month's rent.

To require the landlord to provide the necessary services, the tenant must first give the landlord notice, in writing, listing each violation, and demanding that the violations be cured. A copy of this notice must be delivered to the landlord or agent personally, be mailed to the landlord or agent by certified mail, return receipt requested, or if the landlord or agent is absent from his usual place of business, be left with an employee at the usual place of business.

The landlord must be allowed three (3) days in which to cure the violation. If the landlord does not comply, a tenant can then institute a formal legal proceeding to require the landlord to cure the violations. The formal legal proceeding must proceed quickly. The trial must be held within twelve (12) days after the lawsuit is filed with the court, unless the tenant requests a later date. The landlord must be given written notice of the action by being served with a copy of the summons and the complaint at least five (5) days prior to the court hearing. If the tenant prevails, the judge will order the landlord to fulfill his or her duties and may order the landlord to pay court costs and the tenant's attorney fees.

If the tenant has lost money or otherwise been injured as a result of the landlord's failure to fulfill his or her duties, the tenant may bring formal legal proceedings to recover a sum of money equal to actual damages. If the tenant prevails, the court has the authority to require the landlord to pay three (3) times the tenant's damages. The court may also require the landlord to pay court costs

and the tenant's attorney fees. If the damages the tenant seeks are \$4,000 or less, the action may be taken in small claims court.

THE MOBILE HOME PARK LANDLORD-TENANT ACT OF 1980

The Mobile Home Park Landlord-Tenant Act of 1980 formally established specific rights and responsibilities on the part of mobile home park owners and mobile home park tenants. For areas not covered by the 1980 Act, park owners and mobile home lot owners can look to general landlord-tenant law for answers.

WRITTEN RENTAL AGREEMENTS

The Mobile Home Park Landlord-Tenant Act of 1980, as amended, requires, with limited exceptions, the mobile home lot owner to provide a written rental agreement. This agreement must be executed by both parties and include (1) payment terms, including the time and place of payment, (2) park rules, (3) the name and address of the manager of the mobile home park, (4) the name and address of the owner of the mobile home park or the name and address of an agent of the owner who resides within the state where the mobile home park is located, and (5) terms and conditions under which a security deposit may be withheld by the landlord upon termination of the rental agreement.

Idaho Code § 55-2007(3) of the Mobile Home Park Landlord-Tenant Act of 1980 defines a number of terms and conditions that are deemed an implicit part of any rental agreement, including, but not limited to, the landlord shall: (1) maintain street lights, entry lights and

common area lights, if any, in good working condition, (2) notify each tenant within 15 days after a petition has been filed by the landlord for a change in the zoning of the land upon which the mobile home park is situated, and (3) have the right of entry upon the mobile home lot for maintenance of utilities, protection of the mobile home park, and periodic inspection of the premises, but shall not, except in the case of emergency or suspected abandonment by the tenant, otherwise have the right of entry to such lot without the consent of the tenant. A rental agreement cannot provide for an entrance fee or an exit fee, nor can it require or permit a tenant to waive any rights or remedies provided by the Mobile Home Park Landlord-Tenant Act of 1980.

PARK RULES

Written mobile home park rules are enforceable if they are part of the rental agreement signed by the tenant. Changes are effective either upon the consent of the tenant or upon 90 days notice to tenants.

RENT INCREASES

A rental agreement may provide for rent increases or decreases upon 30 days written notice, based upon the increase or decrease of ad valorem taxes, utility assessments, or other service fees included in the monthly rental charge. All other rental increases require 90 days written notice to the tenant.

RENEWAL AND TERMINATION

Rental agreements are automatically renewed unless the landlord gives the tenant at least 90 days written notice of intent not to renew the rental agreement or the tenant gives 30 days written notice of intent not to renew the rental agreement. A tenant may terminate upon 30 days written notice if employment requires a change in residence and upon less than 30 days notice if reassignment with the armed forces does not provide longer notice.

During the term of the rental agreement the landlord may terminate the tenancy based upon (1) nonpayment of rent or other charges provided for in the rental agreement or (2) substantial or repeated violations of the written mobile home park rules. In either case the landlord must provide three days in which the tenant may comply, by paying the monies owed or remedying the violations. If the tenant does not comply the tenant may be given 20 days in which to vacate the mobile home park.

SECURITY DEPOSITS

The mobile home park landlord must maintain a separate record of deposits. The general landlord-tenant law concerning security deposits applies.

LIABILITY OF THE LIEN HOLDER OR LEGAL OWNER OF A MOBILE HOME FOR BACK RENT AND UTILITIES

Although Idaho law does not specifically provide for the creation of a lien on the mobile home on behalf of a mobile home park owner for unpaid rent and utilities, Idaho law does require the lien holder or legal owner of a mobile home to notify the mobile home park owner, in writing, of any secured or legal interest in the mobile home. If a tenant becomes sixty (60) days behind in rent, or at the time of suspected abandonment by the tenant of the mobile home, the mobile home park landlord must notify the lien holder or legal owner of responsibility for any such costs incurred for the mobile home space, such as rent and utilities. The lien holder or legal owner shall be responsible for payment of utilities from the date of the notice and rent due, including past due rent up to a maximum of sixty (60) days prior to the notice.

A mobile home unit may not be removed from the mobile home space without a signed written agreement from the mobile home park landlord, owner or manager showing a clearance for removal, and until all monies due are paid in full or an agreement has been reached between the legal owner and the landlord.

SALE OF MOBILE HOME

A mobile home park owner has the right to sell mobile homes. A mobile home park owner may receive a

commission on such sale only if he or she has acted as agent for the mobile home owner pursuant to a written agreement voluntarily entered into by the mobile home owner. A new rental agreement must be signed between the landlord and the prospective tenant prior to the sale of the mobile home if it is to remain in the park.

RIGHTS AND REMEDIES

A mobile home park landlord may not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease services because the tenant has exercised legal rights such as complaining about maintenance or safety conditions of the park or by becoming a member of a homeowner's association or similar organization.

If a mobile home park landlord fails to provide services as required, the tenant may file an action for damages or specific performance. See the section titled "Tenant's Remedies."

CONCLUSION

The Attorney General hopes this pamphlet has been of assistance to you in understanding your rights and responsibilities regarding residential rental property. If you have questions that are not covered in this pamphlet, you are urged to seek the advice of an attorney. The Idaho Lawyer Referral Service at 208-334-4500 can assist you in obtaining the name of an attorney in your area who deals with landlord-tenant questions.

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The Consumer Protection Unit enforces Idaho's consumer protection laws, provides information to the public on consumer issues, and offers an informal mediation process for individual consumer complaints.

If you have a consumer problem or question, please call 208-334-2424 or in-state toll-free 1-800-432-3545. TDD access and Language Line translation services are available. The Attorney General's web site is available at www.ag.idaho.gov.